

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5624 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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C. C. SHAH

Versus

CANARA BANK

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Appearance:

MR SHAILESH BRAHMBHATT for Petitioner

MR S.N. SOPARKAR for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, an officer of Canara Bank, filed this petition before this Court challenging thereunder the order annexure 'B' dated 4.5.82, under which he was ordered to be compulsorily retired from the services of the Bank by way of penalty and the order annexure 'D' dated 11.6.84 of the appellate authority dismissing the appeal filed by him against the aforesaid order.



present Manager Shri K.D. Patel, Shri N.D. Patel one of the middlemen confessed that you were fully aware that he was investigating the diary loans in his casting business and he has told them that he has supplied you sixteen tins of ghee and two bags of wheat and also supplied for two and half years an average of two to four Kgs. of loose ghee for each month and the total cost of the ghee and wheat thus supplied works out to Rs.10,200/- for which he was not paid. He ha also confessed that for every crop loan granted through him to the borrowers he himself has deducted Rs.300/- from the loan amount and personally handed over the same to you."

3. After holding full fledged departmental inquiry, the petitioner, under the impugned order was ordered to be compulsorily retired from the Bank services. Appeal was filed but that too has been dismissed. The Bank has filed reply to this Special Civil Application and contested the same.

4. Shri Shailesh Brahmhatt, learned counsel for the petitioner made twofold submissions before this Court. Firstly he contended that the petitioner was not furnished with the inquiry report earlier to passing of the order of penalty. Shri Brahmhatt, carrying further this contention submitted that the petitioner should have been given a copy of the inquiry report and he should have been given an opportunity to make submissions against the findings recorded therein, which process has not been followed. Non supply of Inquiry Report alongwith the order of penalty is against the principles of natural justice. It has next been contended that the disciplinary authority has committed serious illegality in not accepting the defence of the petitioner that the disproportionate deposits found in his bank account was the amount of his brother which he was keeping in trust.

5. On the other hand, the learned counsel for the respondents contended that the decision of Supreme Court given in the case of Mohammad Ramzan has been explained by Supreme Court in a later decision and that decision of Mohammad Ibrahim is only perspective in applicability and the cases which have been decided earlier, as given in the later decision cannot be reopened on the ground of non supply of Inquiry Report. So far as the second contention of the learned counsel for the petitioner is concerned, the learned counsel for the respondents contended that the evidence of the brother of the petitioner has rightly been disbelieved. It is a case of manufacturing defence by the petitioner and it is a case

of believing or not believing the statement or evidence and this Court may not interfere in the matter. There are serious charges against the petitioner and all the charges have been proved against him. Though it was a case where penalty of dismissal could have been given, but a lenient view has been taken and the petitioner was ordered to be compulsorily retired.

6. I have given my thoughtful considerations to the submissions made by learned counsel for the parties. So far as the first contention of the learned counsel for the petitioner is concerned, it is devoid of any substance. Case of Mohammad Ramzan has been explained by Supreme Court in the later decision and the contention of the learned counsel for the respondent is correct that this case cannot be reopened on the ground of non supply of Inquiry Report.

7. So far as second contention of the learned counsel for the petitioner is concerned, it is suffice to say that it is a case of believing or not believing the statement of witness by the Inquiry Officer. This Court, in such matters, has very limited power of judicial review. The charges against the petitioner are very serious and particularly charge No.4, extracted above. It is a case where the petitioner had disproportionate deposits in his account which clearly gives out that the petitioner was getting money by way of illegal gratification. The defence which has been taken by the petitioner is apparently manufactured defence. The petitioner wanted to prove this defence with the help of his brother. In such matters, it is not unnatural or against natural conduct of a human being that a brother may come up with helping hand. To have my own satisfaction, I have gone through the statement of brother of the petitioner recorded in the inquiry and I am satisfied, after going through the statement that the Inquiry Officer has not committed any error much less any illegality in not believing that statement. From the statement of his brother, I am fully convinced and satisfied that he had extended to his brother a helping hand. It is a defence which has been manufactured. The petitioner has utterly failed to furnish any explanation, much less a satisfactory explanation for disproportionate deposits in his accounts. The brother of the petitioner has not deposited any amount with the petitioner earlier to the day he joined the concerned branch of the Bank and after his removal therefrom. These fact itself concludes the issue and render the statement of the brother of the petitioner untrue and without any credibility. I have gone into the filed of appreciating evidence though in

such matters, it is not permissible to this Court. I have adopted this course only to have the conscious satisfaction. This Court has no jurisdiction to sit over the findings of the Inquiry Officer as an appellate authority. This Court, in such matters, has a very limited judicial power of review. The charge No.4 was itself sufficient for the penalty which has been given to the petitioner. I do not find it to be a case where any procedural illegality has been committed by the disciplinary authority or by Inquiry Officer. It is a case where a lenient view has been taken in the matter of punishment. Taking into consideration the charges No.3 and 4 which have been proved against the petitioner, the penalty could have been dismissal also, but a lenient view has been taken by the authority. I do not find any substance in this Special Civil Application. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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(sunil)